

# Governance and Ethics Committee

25 March 2022

<b>Report title</b>	Annual Code of Conduct Report	
<b>Cabinet Member with lead responsibility</b>	Councillor Paula Brookfield Cabinet Member for Governance and Equalities	
<b>Wards affected</b>	All Wards	
<b>Accountable director</b>	David Pattison, Chief Operating Officer	
<b>Originating service</b>	Governance	
<b>Accountable employee</b>	David Pattison	Chief Operating Officer
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<b>Report to be considered by</b>	N/A	

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## Recommendations for decision:

That Governance and Ethics Committee:

1. Notes the report.
2. Adopts the Social Media Protocol at Appendix 1
3. Agrees to the recruitment of additional independent persons.

## 1.0 Purpose

- 1.1 This report provides an annual update on the activity on matters involving the Code of Conduct, in line with the constitution.
- 1.2 In accordance with the relevant legislation the details of the complaints are confidential unless and until they are made public through the process either through a formal hearing or a requirement of an apology. As such this report will not include names and details of the complaint sufficient to identify the complainant or the person complained about.

## 2.0 Background

- 2.1 **Localism Act 2011** – it is important to set out the legal framework and what actions can, and cannot, be taken through it.
- 2.2 Government accepted that it was important to have safeguards in place to prevent the abuse of power and misuse of public money, given that those who elected members to office had the right to expect the highest standards of behaviour. However, it considered that the standards regime under the LGA 2000, under which all local authorities by law had to adopt a national code of conduct and a standards committee to oversee the behaviour of members and receive complaints, regulated by Standards for England, was *ineffective, bureaucratic and encouraged petty complaints or harmful accusations*.
- 2.3 It therefore proposed that, through the Localism Act 2011, local authorities would draw up their own local codes of conduct and it would become a criminal offence for members to deliberately withhold or misrepresent a financial interest. However, concerns have been raised by the Committee on Standards in Public Life (CSPL) in various reports, following the implementation of the Localism Act 2011, as to whether the sanctions for breach of standards were adequate and that it would therefore be monitoring the implementation of the new local government standards regime. CSPL has made a series of recommendations for reform to the Code.
- 2.4 Government has on 18.3.22 now responded to the CSPL's recommendations in its review of Local Government Ethical Standards. The full response can be read here. <https://www.gov.uk/government/publications/local-government-ethical-standards-government-response-to-the-committee-on-standards-in-public-life-report>. It should be noted that the Council has implemented the LGA's model code of conduct and as such is in line with the recommendations of Government.
- 2.5 **Code** – Under section 27 of the Localism Act 2011, a relevant authority must:
  - Promote and maintain high standards of conduct by its members and co-opted members.
  - When discharging its duty, adopt a voluntary code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in their capacity as members (that is in an official capacity).

(There is therefore no requirement in relation to members' private lives although disqualification as a result of imprisonment for three months or more under section 80 of the Local Government Act 1972 remains.)

The decision in *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 helpfully clarified that "official capacity" in the previous 2007 Model Code that applied in England meant:

- Conducting the business of the authority or the member's office.
- Acting, claiming to act or giving the impression that a member is acting as a representative of their authority.

Therefore, any conduct in a member's private capacity will only be covered by a relevant authority's code if they engage in an activity that has a link with the functions of the member's office. Accordingly, words spoken to a journalist by the former Mayor of London, Ken Livingstone, likening the journalist to a concentration camp guard, were not only not spoken in an official capacity, but also were not arguably in the performance of his functions as Mayor.

The seven Nolan principles (selflessness, integrity, objectivity, accountability, openness, honesty and leadership) are set out in section 28 of the Localism Act 2011. Section 28 provides that a local authority in England must ensure that its code of conduct includes appropriate provisions for registering, and disclosing:

- Pecuniary interests.
- Interests other than pecuniary interests.

However, section 28(6) requires a relevant authority to have arrangements in place to deal with complaints that its code of conduct has been breached, including arrangements for:

- Complaints to be investigated.
- Decisions on allegations to be made.

The body that carries out the function in relation to the Code of Conduct at this authority is the Governance and Ethics Committee. The Council's constitution provides that the Monitoring Officer will receive, assess, refer and determine complaints that Councillors have not complied with the Code of Conduct and will refer these to the Council's Governance and Ethics Committee for determination where an investigation has taken place. The approach that the Council adopts for dealing with complaints is in line with the LGA's recommendations on dealing with complaints.

The arrangements are designed to ensure that the most serious complaints are ones heard by the sub-Committee and not ones that are either outside the jurisdiction of the Committee or indeed ones that are considered capable of informal resolution or not proportionate to be investigated.

**2.6 The role of the independent person** - Section 28(7) of the Localism Act 2011 requires a relevant authority to appoint at least one independent person whose views must be

sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate. Members who have had an allegation made against them may, if they wish, also seek the views of the independent person. This Council currently has one independent person, Ray Tomkinson.

It is recommended that further independent persons are appointed as a matter of good practice in order to support the existing Independent person. As a result of the recent work on allowances it has been agreed that the independent persons will receive an allowance of £750 for their work.

2.7 **Sanctions** – The Localism Act 2011 does not give a relevant authority any power to impose sanctions for breach of its code, such as:

- Disqualification/Suspension from office
- Withdrawal of monetary allowances payable under the Local Authorities (Members' Allowances) (England) Regulations 2003 (SI 2003/1021)

Therefore, possible sanctions may include:

- Training for the Councillor
- A formal letter to the member found to have breached the code.
- Formal censure by motion.
- Removal of the member from a committee or committees.
- Adverse publicity that may (or may not) reduce the electorate's confidence in the member so that they are not re-elected.

### 3.0 **CWC's Code of Conduct**

3.1 **Formal Code of Conduct** - In line with a number of authorities the Council adopted the LGA model Code of Conduct in May 2021 following a report to this Committee. It also adopted a revised hearing procedure in July 2021.

3.2 **Steps to promote compliance** – the Council has ensured that all new Councillors have had training on the Code of Conduct and the rules regarding disclosure of pecuniary interests on taking office. In addition a large amount of training has been provided for all Councillors about good behaviour, including sessions provided to each political group. In addition training has been provided by external providers on the Code and what it means in practical terms.

A further round of training has been organised which will take place shortly after the election in May 2022 provided by the Monitoring and Deputy Monitoring Officers.

3.3 **Procedures for dealing with complaints** – the Council takes the approach recommended by the LGA in dealing with complaints. Indeed the Council's approach is that complaints should be treated confidentially until such time as they become public through a report to the Committee or through actions required through informal resolution.

As a result of the recent pandemic and other matters there have at times regrettably been some delays in dealing with complaints, in order to address this an additional Deputy Monitoring Officer has been appointed.

### **3.4 Complaints –**

In Municipal Year May 2020 – May 2021 there were 6 complaints, of these 2 were dismissed as being outside of the code and 4 were dealt with through informal procedures.

In Municipal Year 2021- 2022 there have been 6 complaints of these 3 have been addressed through informal resolution, 1 has been received recently and 2 are being investigated.

The majority of the complaints relate to the use of social media. As a result of this the Committee has previously considered a protocol on the use of social media and as such it is now proposed that this is adopted.

### **4.0 Financial implications**

4.1 There are no financial implications arising from the proposed amendments to the Constitution.

### **5.0 Legal implications**

5.1 The Council is required to have procedures in place regarding the Code of Conduct under the Localism Act 2011. [DP/24032022B]

### **6.0 Equalities implications**

6.1 The Council must, in the exercise of its functions, have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.2 The Constitution seeks to ensure that, in its decision-making and its operations, the Council fully complies with the public-sector equality duty.

### **7.0 Any other implications**

7.1 There are no other implications arising from recommendations in this report.

## **8.0 Schedule of background papers**

8.1 Code Update - July 2021

## **9.0 Appendices**

9.1 Appendix 1 – Social Media Protocol

## Appendix 1

### **Guidance on Councillors' use of Social Media and Mobile Devices**

This guidance applies to Councillors, it is also general good practice for professional conduct.

Social media is a positive tool to communicate and engage with your constituents and many councillors are increasingly using it to do just that. This guide is therefore not designed to put you off using social media, but rather to help you avoid its pitfalls.

The Council's Corporate Communications Team and the Democratic Services Team are available to help you with any questions you might have about social media.

#### **What is the purpose of this guidance?**

The purpose of this guidance is to provide parameters for Councillors' appropriate use of social media and mobile devices.

Improper use of social media and mobile devices could be used as grounds for challenging a contentious decision or result in complaints of breaching the Councillors' Code of Conduct, for a failure to show respect for others or bringing the Council or the office of Councillor into disrepute.

Good practice on the use of social media and mobile devices, popular social media platforms include Facebook, Twitter, LinkedIn, YouTube, Instagram, TikTok and blogs (web logs). Types of mobile devices include smartphones, tablets and laptops.

Councillors may use these and other platforms in their official capacity, but should remember that the public may still perceive them as acting in that capacity even when that is not their intention.

A general rule of thumb is that if you wouldn't say something in a public meeting, do not say it on social media.

#### **Councillors should:**

- consider whether they need to set appropriate privacy settings for any blog or networking site – especially if it is a private, non-political blog;
- keep an eye out for potentially defamatory, untrue or obscene posts from others and remove them as soon as possible to avoid the perception that they condone such views;
- be careful about any connection with service users who are vulnerable adults or children, as this could be regarded as a safeguarding issue;
- ensure they use Council facilities appropriately;

- be aware that by publishing information that they could not have accessed without their position as a Councillor, they will be seen as acting in their official capacity;
- be careful about being too specific or personal if referring to individuals; and
- be aware that the libel laws and other legislation cover blogs, social media and other forms of digital content publication.

### **Councillors should not:**

- place images or text on their site from a copyrighted source (for example extracts from publications or photos) without permission;
- post comments that they would not be prepared to make face to face;
- refer in a blog to any information identified by the Council as confidential or exempt;
- disclose information given to them in confidence by anyone or information acquired by them which they believe or are aware is of a confidential nature;
- publish personal data of individuals except with express written permission to do so;
- give the impression that they are expressing the views of the Council where it is not appropriate to do so; and
- if they are involved in determining planning or licensing applications or other quasi-judicial decisions, publish anything on their blog that might suggest they do not have an open mind about a matter they are involved in determining.

### **The Use of Social Media and Mobile Devices at Meetings**

Use mobile devices sparingly, discreetly and with common sense at meetings, considering the impression they are giving to others. Councillors should remember that most meetings are now recorded. There may be occasions when texting or emailing between Councillors during meetings on matters relevant to the debate at hand may be valuable (on the same basis as circulating paper notes to other Councillors). Mobile devices also enable Councillors to manage their busy lives when time is at a premium.

However, frequent use of these devices during meetings may give the public the impression that the Councillor is not paying full attention to an item that is being discussed in a debate on a decision that is to be made.

Examples of acceptable use:

- reading and annotating meeting papers and background information relevant to that meeting;

- communicating with others at the meeting on matters relevant to the debate at hand
- sending and receiving communications to/from home relating to domestic circumstances (e.g. childcare arrangements), within reason and with common sense.

Avoid the following:

- using social media during quasi-judicial meetings or during the consideration of confidential or exempt items of business at meetings; and
- frequently checking emails and messages that are not related to the meeting;
- taking and sending electronic images of proceedings; and
- extended periods of use that suggests that insufficient attention is being paid to the meeting.

The LGA (Local Government Association) has developed some background information on the use of social media for Councillors which is available to access [here](#). Further support and guidance such as do's and don'ts when using social media are also available from the LGA and available to access [here](#).